

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION
HON. DOUGLAS F. McCORMICK, U.S. MAGISTRATE JUDGE

Tentative Ruling on Law & Motion Matters

DATE: May 14, 2018
CASE: Mohammad Ali Hedayati, et al. v. The Perry Law Firm, APLC, et al.,
Case No. SA CV 17-00688-DOC-DFM
RE: Defendant's Motion to Dismiss Plaintiffs' First Amended Complaint
(Dkt. 23)

Defendant The Perry Law Firm, APLC ("Defendant") moves to dismiss the First Amended Complaint. Plaintiffs Mohammad Ali Hedayati ("M. Ali Hedayati") and Mohammad Hedayati ("M. Hedayati") (together, "Plaintiffs") filed an opposition, and Defendant filed a reply. The motion was referred to this Court for resolution. See Dkt. 34.

Standard of Review

Under Federal Rule of Civil Procedure 12(b)(6), a complaint must be dismissed when a plaintiff's allegations fail to set forth a set of facts that, if true, would entitle the complainant to relief. See Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007); Ashcroft v. Iqbal, 556 U.S. 662, 679 (2009) (holding that a claim must be facially plausible in order to survive a motion to dismiss). The pleadings must raise the right to relief beyond the speculative level; a plaintiff must provide "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Twombly, 550 U.S. at 555 (citing Papasan v. Allain, 478 U.S. 265, 286 (1986)). On a motion to dismiss, a court accepts as true a plaintiff's well-pleaded factual allegations and construes all factual inferences in the light most favorable to the plaintiff. See Manzarek v. St. Paul Fire & Marine Ins. Co., 519 F.3d 1025, 1031 (9th Cir. 2008). A court is not required to accept as true legal conclusions couched as factual allegations. See Iqbal, 556 U.S. at 678.

In evaluating a Rule 12(b)(6) motion, review is ordinarily limited to the contents of the complaint and material properly submitted with the complaint. See Van Buskirk v. Cable News Network, Inc., 284 F.3d 977, 980 (9th Cir. 2002); Hal Roach Studios, Inc. v.

Richard Feiner & Co., Inc., 896 F.2d 1542, 1555 n.19 (9th Cir. 1990). Under the incorporation by reference doctrine, courts may also consider documents “whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the pleading.” Branch v. Tunnell, 14 F.3d 449, 454 (9th Cir. 1994), overruled on other grounds by 307 F.3d 1119, 1121 (9th Cir. 2002). Courts may treat such a document as “part of the complaint, and thus may assume that its contents are true for purposes of a motion to dismiss under Rule 12(b)(6).” United States v. Ritchie, 342 F.3d 903, 908 (9th Cir. 2003).

Dismissal with leave to amend should be freely given “when justice so requires.” Fed. R. Civ. P. 15(a)(2). This policy is applied with “extreme liberality.” Morongo Band of Mission Indians v. Rose, 893 F.2d 1074, 1079 (9th Cir. 1990); Lopez v. Smith, 203 F.3d 1122, 1127 (9th Cir. 2000) (holding that dismissal with leave to amend should be granted even if no request to amend was made). Dismissal without leave to amend is appropriate only when the court is satisfied that the deficiencies in the complaint could not possibly be cured by amendment. See Jackson v. Carey, 353 F.3d 750, 758 (9th Cir. 2003).

Factual and Procedural Background

Plaintiffs are brothers who share the same first and last name but reside separately in Orange County. See FAC ¶¶ 5-6. Plaintiffs’ full names are “Mohammad Hedayati” and “Mohammad Ali Hedayati,” respectively. Id. The Court will refer to Plaintiffs as M. Hedayati and M. Ali Hedayati.

On August 27, 2015, Defendant commenced a lawsuit in state court against M. Hedayati to recover delinquent homeowner association dues. See FAC ¶ 11. The state court entered a default judgment against M. Hedayati on January 1, 2016. See id. ¶ 12. Defendant then recorded abstracts of judgment in several counties in California, including Los Angeles County (on March 21, 2016), Riverside and Orange Counties (on March 22, 2016), and San Diego and San Bernardino Counties (on March 24, 2016). See id. ¶¶ 13-18.

On or about March 23, 2016, M. Ali Hedayati received a notice of involuntary lien from the Los Angeles County Recorder against his property. See id. ¶ 19. On or about March 29, 2016, M. Ali Hedayati received two more notices of involuntary liens against his property from the Orange County and San Bernardino County Records’ offices. See id. ¶¶ 20-21.

On April 27, 2016, M. Hedayati’s attorney contacted Defendant requesting that they set aside the default judgement against M. Hedayati because they served the wrong “Mohammad Hedayati.” See id. ¶ 22. M. Hedayati’s attorney clarified that Defendant had served M. Ali Hedayati and that M. Ali Hedayati and M. Hedayati, while brothers, are not on speaking terms. See id. On May 9, 2016, Defendant received an email from M. Hedayati’s attorney clarifying that Defendant had served the state court summons and complaint on M. Ali Hedayati at an address unaffiliated with M. Hedayati and that Defendant had mailed the abstract of judgment to the same incorrect address. See id. ¶ 23. M. Hedayati’s attorney reiterated his request that Defendant set aside the default judgment

and “remove the lien” wrongly entered. Id. On May 12, 2016, Defendant agreed in writing to withdraw the judgment liens. See id. ¶ 24.

M. Ali Hedayati filed his Complaint against Defendant on April 14, 2017. See Dkt. 1 (“Complaint”). On September 20, 2017, Plaintiffs amended the Complaint and filed the FAC, which added M. Hedayati as a new party. See Dkt. 20 (“FAC”). Defendant filed the instant Motion on October 4, 2017. See Dkts. 23 (“Motion”), 24 (“Amended Notice of Motion”). Plaintiffs filed their Opposition on October 24, 2017, and Defendant filed its reply on October 30, 2017. See Dkts. 25 (“Opposition”), 26 (“Reply”).

Plaintiffs allege in the FAC that Defendant violated various subsections of the Fair Debt Collection Practices Act (“FDCPA”) by recording and failing to withdraw or release the abstracts of judgment that resulted in judgment liens against M. Ali Hedayati’s property. Specifically, Plaintiffs allege that Defendant’s conduct violated 15 U.S.C. §§ 1692d, 1692e, 1692e(2)(A), 1692e(4), 1692e(5), 1692e(10), 1692f, 1692f(1), and 1692f(6). See FAC ¶¶ 31-49.

Before Plaintiffs initiated the instant action, M. Ali Hedayati filed a separate federal lawsuit against Defendant also alleging violations of the FDCPA while Defendant attempted to collect the delinquent homeowner association dues owed by M. Hedayati.¹ See Hedayati v. The Perry Law Firm, No. 16-0846, Dkt. 90 at 2 (C.D. Cal. Oct. 27, 2017) (“Hedayati I”). The Court conducted a bench trial in that lawsuit on May 31, 2017, and issued its Findings of Fact and Conclusions of Law on October 27, 2017. See id. The Court found that Defendant did not violate the FDCPA, see id., and accordingly entered judgment against M. Ali Hedayati on November 30, 2017. See id., Dkt. 92.

¹ Because the proceedings in M. Ali Hedayati’s other lawsuit against Defendant are directly related to the instant action, and may in fact be dispositive, the Court takes judicial notice of the proceedings in that case. See U.S. ex rel Robinson Rancheria Citizens Council v. Borneo, Inc., 971 F.2d 244 (9th Cir. 1992) (federal courts “may take notice of proceedings in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue” (quoting St. Louis Baptist Temple, Inc. v. FDIC, 605 F.2d 1169, 1172 (10th Cir. 1979))).

Analysis

In its motion to dismiss, Defendant argues that Plaintiffs' claims are untimely under the statute of limitations, barred by res judicata, and do not allege facially plausible violations of the Fair Debt Collection Practices Act ("FDCPA"). See Motion at 12-14.²

A. Statute of Limitations

Section 1682k(d) of the FDCPA requires that any action brought under the FDCPA be brought "within one year from the date on which the violation occurs." 15 U.S.C. § 1692k(d). In the Ninth Circuit, this date is that when the plaintiff first "knows or has reason to know of the injury which is the basis of the action." Lyons v. Michael & Assocs., 824 F.3d 1169, 1171 (9th Cir. 2016) (quoting Mangum v. Action Collection Serv., Inc., 575 F.3d 935, 940 (9th Cir. 2009)). Some courts in this Circuit have also recognized the "continuing violation" doctrine in the context of FDCPA claims. See, e.g., Joseph v. J.J. Mac Intyre Cos., L.L.C., 281 F. Supp. 2d 1156, 1160 (N.D. Cal. Sept. 12, 2003); Goldsmith v. Aargon Agency, Inc., No. 16-02066, 2018 WL 1567848 (D. Nev. Mar. 30, 2018) (noting same). Courts applying the "continuing violation" rule do so where the "conduct complained of constitutes a continuing pattern and course of conduct as opposed to unrelated discrete acts." Joseph, 281 F. Supp. 2d at 1161. "If there is a pattern, then the suit is timely if the action is filed within one year of the most recent date on which the defendant is alleged to have violated the FDCPA, and the entire course of conduct is at issue." Id. (applying "continuing violation" doctrine in FDCPA case where defendant placed "over 200 [phone] calls to Plaintiff's residence during a nineteen-month period.>").

Here, M. Ali Hedayati alleges that he received the notice of involuntary lien from the Los Angeles County Recorder against his property "on or about March 23rd, 2016." FAC ¶ 19. M. Ali Hedayati likewise alleges that he received notices from the Orange County and San Bernardino County Recorders on March 29, 2016, informing him of the same. See id. ¶¶ 20-21. Given M. Ali Hedayati's acknowledgement that he discovered the allegedly improper judgment lien against his property in or around March 2016, M. Ali Hedayati's statute of limitations to bring a claim expired in or around March 2017. M. Ali Hedayati initiated the instant action on April 14, 2017. Thus, M. Ali Hedayati's claim is facially untimely.

As to M. Hedayati, the FAC includes an email excerpt from M. Hedayati's attorney informing Defendant that they incorrectly "mail[ed] documents (abstract of judgment)" and "served the summons and complaint" on M. Hedayati's "estranged brother," M. Ali Hedayati. FAC ¶ 23. M. Hedayati, through his attorney, proceeds to request that Defendant "remove the lien," which is the subject of the instant lawsuit, and voluntarily set aside the judgment in the state court action. Id. From these allegations, it is apparent that M. Hedayati had notice of Defendant's allegedly improper recording of the abstracts of judgment no later than May 9, 2016. Thus, M. Hedayati's claim expired on or around May

² All page references are to the CM/ECF pagination.

9, 2017. Because M. Hedayati first filed his claim in the FAC on September 20, 2017, M. Hedayati's claim is likewise facially untimely.

Plaintiffs contend that the "continuing violation" doctrine applies to rescue the FAC. See Opposition at 19. But Plaintiffs only assert conclusory allegations of Defendant's repeated conduct. See id. Importantly, "Defendant's maintenance of invalid judgment liens for more than 300 days," id., is distinguishable from the "numerous violations" or "repeated conduct" that other courts have found sufficient to constitute continuing violations. See Goldsmith, 2018 WL 1567848, at *5-*6 (rejecting claim that continued collection of unlawful interest and fees was continuing violation); see also Ward v. Caulk, 650 F.2d 1144, 1147 (9th Cir. 1981) ("A continuing violation is occasioned by continual unlawful acts, not by continual ill effects from an original violation."); Cutler ex rel. Jay v. Sallie Mae, Inc., No. 13-2142, 2015 WL 1909482, at *6 (C.D. Cal. Apr. 24, 2015) (distinguishing "a phone call at midnight, or a threatening call," which are discrete acts, from "a series of calls [that] cannot be said to occur on a particular day," which evidence a "continuing pattern"); Camacho v. Nat'l Credit Adjustment Agency, No. 06-5040, 2007 WL 760416, at *2 (E.D. Wash. Mar. 8, 2007) (noting that the continuing violation doctrine is "applicable only in cases in which the defendant engaged in a large number of similar acts"). Because Plaintiffs' claims stem from Defendant's single-instance recordings of the abstracts of judgment with various counties, Plaintiffs cannot avail themselves to the "continuing violation" doctrine to toll the statute of limitations.

To the extent that Plaintiffs rely on Currier v. First Resolution Investment Corp., 762 F.3d 529 (6th Cir. 2014), to show that their FDCPA claims are timely, such reliance is unpersuasive. There, the Sixth Circuit held that "filing and failing to release an invalid judgment lien against a debtor's home while the related state court collection action remains pending falls within the broad scope of practices prohibited by the FDCPA." Currier, 762 F.3d at 532. In Currier, however, defendant's judgment was not yet final and was thus invalid when the lien was filed. See id. Here, by contrast, Defendant validly obtained judgment before filing its judgment liens. See FAC ¶ 12. Regardless, as to timeliness of FDCPA claims, Currier "does not change that the statute of limitations begins to run after 'a discrete violation of the FDCPA.'" Stennett v. Midland Funding, LLC, No. 16-656, 2017 WL 1205589 (W.D. Ky. Mar. 30, 2017) (quoting Purnell v. Arrow Fin. Servs., 303 F. App'x 297, 301 (6th Cir. 2008)). Here, the FAC alleges that the discrete violations of the FDCPA stemmed from Defendant's recording of the abstracts of judgment in the different California counties. See FAC ¶ 28. Even under Currier, "it would appear that maintaining a judgment lien is not a discrete act for purposes of the FDCPA's statute of limitations." Stennett, 2017 WL 1205589, at *3; see also Slorp v. Lerner, Sampson, & Rothfuss, 587 F. App'x 249, 258 (6th Cir. 2014) (acknowledging maintenance of collection suit may continue to harm plaintiff but "initiation of the suit was [the] discrete, immediately actionable event"). Accordingly, Plaintiffs' claims remain untimely and are barred as a matter of law.

B. Res Judicata

Defendant also argues that res judicata, or claim preclusion, bars M. Ali Hedayati's claims because he alleged the same FDCPA violations in his prior lawsuit against

Defendant. See Motion at 13-14. And insofar as the claims in the FAC were not already alleged, Defendant argues that M. Ali Hedayati could have asserted them in the previous action because they arose from the same facts. See id. M. Ali Hedayati disputes this position, arguing that the prior action has not yet resulted in a final judgment on the merits, the parties between the two actions are not identical, and the instant action stems from different operative facts. See Opposition at 20-21.

To raise a successful res judicata defense, a defendant must satisfy three elements: (1) an identity of claims, (2) a final judgment on the merits in the first action, and (3) privity between the parties involved in both lawsuits. See Tahoe-Sierra Pres. Council, Inc. v Tahoe Reg'l Planning Agency, 322 F.3d 1064, 1077 (9th Cir. 2003) “The fact that res judicata depends on an ‘identity of claims’ does not mean that an imaginative attorney may avoid preclusion by attaching a different legal label to an issue that has, or could have, been litigated.” Id. at 1077-78. The essential criteria in “determining whether there is an identity of claims between the first and second adjudications is ‘whether the two suits arise out of the same transactional nucleus of facts.’” Owens v. Kaiser Found. Health Plan, Inc., 244 F.3d 708, 713 (9th Cir. 2001) (quoting Frank v. United Airlines, Inc., 216 F.3d 845, 851 (9th Cir. 2000)).

a. Identity of Claims

To determine whether two lawsuits involve the same claims, courts look to four factors: “(1) whether the two suits arise out of the same transactional nucleus of facts; (2) whether rights or interests established in the prior judgment would be destroyed or impaired by prosecution of the second action; (3) whether the two suits involve infringement of the same right; and (4) whether substantially the same evidence is presented in the two actions.” Mpoyo v. Litton Electro-Optical Sys., 430 F.3d 985, 987 (9th Cir. 2005) (citing Chao v. A-One Med. Servs., Inc., 346 F.3d 908, 921 (9th Cir. 2003)).

Here, M. Ali Hedayati’s single cause of action arises from the same transactional nucleus of facts as his prior lawsuit against Defendant. Like in the prior case, the instant action stems from Defendant’s conduct against M. Ali Hedayati while it attempted to collect a debt from M. Hedayati. Both actions allege violations of § 1692 of the FDCPA against Defendant and rely on the same evidence—e.g., the abstracts of judgment, records of Defendant’s recordation of the abstract in Riverside, Los Angeles, San Diego, Orange, and San Bernardino Counties, and the resulting notices of involuntary lien against M. Ali Hedayati’s property. See FAC ¶¶ 13-24. The common identity of claims is bolstered by M. Ali Hedayati’s own trial submissions and testimony in the prior suit. See, e.g., Hedayati I, Dkt. 70 at 2-3 (“[Defendant’s] behavior constituted multiple debt collection abuses by . . . (7) recording abstracts of judgment in the counties of Riverside, Los Angeles, Orange, San Bernardino and San Diego.”); Dkt. 82 at 9 (“[R]eceiving correspondence in the mail regarding a (sic) HOA foreclosure lawsuit . . . notices of involuntary lien assessments from three County Recorders all satisfy the . . . plaintiff is either obligated or allegedly obligated to pay any debt.”). Moreover, to the extent that M. Ali Hedayati’s overlapping claims were not explicitly raised in his prior lawsuit, M. Ali Hedayati has not shown why those claims could not have been litigated then. See Tahoe-Sierra, 322 F.3d at 1077-78. Because of the

overlap of facts, evidence, and issues between M. Ali Hedayati's prior action and this suit, the Court finds that the "identity of claims" element is satisfied.

b. Final Judgment on the Merits

Res judicata also requires that a final judgment on the merits to have been rendered in the earlier action. See Tahoe-Sierra, 322 F.3d at 1077. After the Parties had briefed the Motion and Opposition, Judge Carter issued his Findings of Fact and Conclusions of Law and entered final judgment against M. Ali Hedayati on November 30, 2017. See Hedayati I, Dkt. 90, 92. Accordingly, the second requirement for res judicata is satisfied.

c. Privity Between the Parties

The final res judicata element requires privity between the parties in both lawsuits. See Tahoe-Sierra, 322 F.3d at 1077. If successive actions involve the same parties, then the privity requirement is established. See id. at 1081 (finding that the privity requirement is fulfilled when identical parties are named in both suits). However, even if the parties are not identical, privity may exist when "there is 'substantial identity' between parties, that is, when there is sufficient commonality of interest." Id. (quoting In re Gottheiner, 703 F.2d 1136, 1140 (9th Cir. 1983)); see also Stratosphere Litig. L.L.C. v. Grand Casinos, Inc., 298 F.3d 1137, 1142 n.3 (9th Cir. 2002) (finding privity when a party is "so identified in interest with a party to former litigation that he represents precisely the same right in respect to the subject matter involved") (citation omitted); Shaw v. Hahn, 56 F.3d 1128, 1131-32 (9th Cir. 1995) (finding privity when the interests of the party in the subsequent action were shared with and adequately represented by the party in the former action).

Here the privity requirement is satisfied as to M. Ali Hedayati, as he was a named plaintiff in both suits. See Tahoe-Sierra, 322 F.3d at 1081 ("[S]everal parties in both actions are identical, and therefore quite obviously in privity."). Plaintiffs contend that because the instant action was brought by M. Ali Hedayati and M. Hedayati, together, the parties in the prior suit and the instant suit are not identical and now lack privity. See Opposition at 21. Plaintiffs' contention lacks any basis in law. See Tahoe-Sierra, 322 F.3d at 1081 (finding privity as to specific plaintiffs named in earlier and current actions).

Because all three res judicata elements are satisfied, the Court finds that M. Ali Hedayati's claim for violations of the FDCPA arising from Defendant's recording and failing to withdraw or release the abstracts of judgment is barred.

C. Failure to Allege a Plausible FDCPA Violation

Defendant also argues that Plaintiffs failed to state a facially plausible claim for violations of the FDCPA and its underlying public policy. See Motion at 14-18. Because the resolution of the statute of limitations and res judicata arguments is dispositive, the Court need not—and expressly declines to—address whether Plaintiffs' FAC pled a facially plausible violation of the FDCPA.

D. Bad Faith and Harassment

Defendant asks the Court to find that Plaintiffs pursued this action in bad faith and for the purpose of harassment. The Court finds insufficient evidence that Plaintiffs brought the action in bad faith and for purposes of harassment. See Arutyunyan v. Cavalry Portfolio Services, No. 12-4122, 2013 WL 500452, at *3 (C.D. Cal. Feb. 11, 2013) (noting that “inartful pleading and failure to state a claim does not demonstrate that an action was brought in bad faith”). While Plaintiffs’ claims are barred by the doctrine of res judicata and the statute of limitations, this does not amount to bad faith. In the absence of evidence of bad faith or harassment, Defendants’ request is denied.

Disposition

For the foregoing reasons, the Court recommends that Defendant’s motion to dismiss the FAC be GRANTED and Plaintiffs’ claims for violations of the FDCPA be dismissed without leave to amend. Under 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b)(2), a party may serve and file objections to this Report and Recommendation within 14 days of service.